

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

MMK GROUP, LLC,

Plaintiff,

Case No. 3:07 CV 55

-vs-

MEMORANDUM OPINION

THE SHESHELLS COMPANY, LLC, et al.,

Defendant.

KATZ, J.

This matter is now before the Court on the following motions: 1) plaintiff MMK and third party defendants' motion to dismiss (Doc. 201); 2) defendant Thermodyn's motion for summary judgment (Doc. 228); 3) defendants SheShells, Hass, and Teadts' motion for summary judgment (Doc. 229); 4) plaintiff MMK's motion for partial summary judgment as to the patent infringement claim (Doc. 230); 5) plaintiff MMK and third party defendants' motion for partial summary judgment as to defendant Hass's breach of contract claim (Doc. 231); and 6) plaintiff MMK and third party defendants' motion for partial summary judgment as to the Thermodyn Defendants' claims (Doc. 232). These motions have all been fully briefed, and oral argument was held on them on March 22, 2010. It is evident from the various memoranda filed in connection with the motions, as well as the transcript of oral argument, that summary judgment would be premature as to all but one of the claims in this suit, as there exist genuine issues of material fact.

Thermodyn's motion for summary judgment (Doc. 228) will be granted in part, however, as to MMK's claim for trade dress infringement. Review of the visual evidence in the record shows that there is simply no meaningful similarity between the trade dress employed by MMK and the trade dress used by SheShells, and no likelihood that a consumer would be confused as between the two. The motion will be denied otherwise.

In its response brief to Thermodyn's motion for summary judgment, MMK requests permission to amend its Complaint to conform to the evidence pursuant to Fed. R. Civ. P. 15 as to its unjust enrichment and misappropriation/conversion claims. The defendants do not appear to oppose this request, and it will be granted. MMK is granted ten days to file an amended complaint; Thermodyn will be permitted ten days to file an answer.

Therefore, Thermodyn's motion for summary judgment (Doc. 228) is granted as to MMK's claims for trade dress infringement under the Lanham Act and denied otherwise. The other motions noted above (Docs. 201, 229, 230, 231, and 232) are also denied.

IT IS SO ORDERED.

S/ David A. Katz
DAVID A. KATZ
U. S. DISTRICT JUDGE